NOTES ON MUNICIPAL GOVERNMENT.

AMERICAN CITIES.

Cincinnati.*—*Bonded Indebtedness.* The recent sale of $1,000,000 3 per cent waterworks bonds, running forty years with option to call in at expiration of twenty years, at a premium of $23,939, thus netting the purchaser 2.84 per cent, has attracted attention to the splendid credit of Cincinnati. The bonds were purchased by local bankers and brokers, Eastern savings sureties and banks not being permitted by their charters to purchase Cincinnati bonds, because the city ownership of the Southern Railway cannot for their purposes be considered an asset. When this road was projected, bonds of the city secured by a mortgage on the road bore interest at rate of 7 3-10 per cent and 7 per cent; these bonds are now maturing and are being refunded at 3½ per cent, and may bring premium enough to reduce the interest charge to 3 per cent or lower. Should this road be sold at its fair value (and this question will be brought before the legislature next winter) nearly the entire bonded indebtednese of the city could be wiped out. Cincinnati would then be in an exceptional situation and might undertake extensive municipal improvements.

Gas Works.† The gas fight has ended in a victory for cheaper gas. The ordinance granting the new company a franchise, mentioned in the last number of the ANNALS, was defeated after a bitter fight in the Board of City Affairs. The present gas company then submitted a proposition to the Board of Legislation offering to furnish illuminating gas at seventy-five cents per one thousand cubic feet and fuel gas at fifty cents, provided the present franchise be extended ten years from date. A new ordinance, embodying these provisions, has just been enacted, and during the next decade the citizens of Cincinnati will be supplied with illuminating gas twenty-five cents cheaper and fuel gas fifty cents cheaper than at present.

Detroit.—*Municipalization of Street Railways.* The long continued agitation which began with the passage of the act empowering the city of Detroit to acquire the street railway system by compulsory purchase has been brought to a close through a decision of the Supreme Court of Michigan, declaring the act to be unconstitutional. Under the provisions of the act,‡ the common council of Detroit was empowered to appoint by resolution at any time within the next

*Communication of Max B. May, Esq.

†Communication of Max B. May, Esq.

‡ See ANNALS, July, 1899, Notes on Municipal Government.

twenty years three persons to constitute a commission. This commission was given power to acquire by deed, lease or other satisfactory conveyance the street railways existing at the time of the passage of the act and lying wholly within or partly within and partly without the city. The management, operation and maintenance of all such railroads was to be vested in the commission.

Immediately after the passage of the act and the appointment of the commission negotiations were opened with the various street railway companies with a view to arriving at some agreement as to the value of the property and franchise rights. Experts were appointed to appraise the value of real estate, power houses, cars, tracks, equipment, franchise privileges, etc. Acting upon the reports of these experts the commission placed the value of the physical property of the companies at $8,000,000 and the value of franchises at $8,478,563.86, making a total of $16,478,563.86. The commission, in its report to the common council, expressed its belief in the possibility of establishing immediately a system of three-cent fares with universal transfers. In spite of the large payment for franchise privileges, a large net profit would accrue to the city. The reduction of fares from five to three cents would mean a saving of some $500,000 to $800,000 annually to the people of the city.

On the petition of a number of citizens, the attorney-general of the State began proceedings to test the constitutionality of the act. The argument against its constitutionality was based on the following grounds:

1. Because said act undertakes to confer upon the city of Detroit authority to engage in a work of internal improvement, contrary to the provisions of section 9 of article 14, of said constitution.

2. Because said act undertakes to confer upon a municipal corporation powers which are neither local, legislative nor administrative, contrary to the provisions of section 38, of article 4, of said constitution.

3. Because said act purports to give to said "Detroit Street Railway Commission" mentioned in said act, unlimited and unrestricted power to contract debts for and loan the credit of said city of Detroit, contrary to the tenor and effect of section 13 of article XV of said constitution, which provides that the legislature shall provide for the incorporation and organization of cities and villages, and shall restrict their powers of taxation, borrowing money, contracting debts and loaning their credit.

4. Because the powers to contract and purchase sought to be conferred by said act upon said "Detroit Street Railway Commission" cannot be either conferred upon or exercised by said commission, under said constitution.

5. Because said act attempts to clothe said "Detroit Railway Commission" with legislative powers as to street railways and the operation and management of the same.

6. Because said act is an unlawful interference with the rights of local self-government vested by said constitution in the citizens of said city, in that it undertakes to take out of the control of the common council and board of estimates of said city the several matters of purely local concern, above mentioned, and vest the same in the said "Detroit Street Railway Commission," which is a body the members of which hold their offices for long appointive terms, are a law unto themselves and are subordinate and responsible neither to said citizens nor to their representatives in any matter or form."

The decision of the court is based exclusively on the first of these contentions. After a careful review of the history of internal improvements in Michigan and of the abuses which led to the insertion in the constitution of a provision that the state "shall not be a party to or interested in any work of internal improvement nor engaged in carrying on any such work, except in the expenditure of grants to the state of land or other property," the court goes on to say that what the state cannot do itself cannot be done through the aid of inferior municipalities.

The claim of counsel for the commission that street railways are public highways, that the municipality may acquire and operate them under its power to construct and maintain such means of communication is answered by the court as follows:

"To say the system of railroads as it existed in 1850 constituted internal improvements within the meaning of the constitution, and that the system of roads existing in Detroit, which are to be taken over by this commission, and the lines leading thereto with which said commission is allowed to make agreements for deeds, leases, and in relation to the exchange of tickets and transfers, is not a system of internal improvements within the meaning of the constitution, is to deny to words in common use their ordinary and accepted meaning. If the legislature may authorize the city of Detroit to enter into the proposed arrangement, it may authorize any other municipality to do so, and by concert of action, between the various municipalities, they may cover the state with means of rapid transit, owned and operated by the municipalities. This would enable the state to do by means of agencies called into being by itself, what it cannot itself do, and what the constitution forbids it doing."

In concluding the comments upon the rules of constitutional interpretation:

"It is said that the constitution was adopted a long while ago, and

that this is a gigantic age in which enterprises are being formed on a scale so vast as to be almost beyond comprehension, and the constitution ought to be given a construction in keeping with the spirit of the age. This argument is more properly addressed to the people than to the courts. Constitutions do not change as public opinion changes. Their provisions do not mean one thing one day and another another day. The written constitution is the most solemn declaration of the people in relation to the powers of state. It was drawn by their representatives selected especially for that purpose; it had their approval at the polls. Every officer of every kind in the state is required to take an oath to support it, before he can enter upon the duties of his office. It is not a pleasant duty to declare that a law passed by the legislature and approved by the governor is not valid. When such a law is enacted courts cannot for a moment hesitate in performing that duty, disagreeable as it is. The provisions of the constitution involved in this controversy have been in existence for nearly half a century. As we have already shown, they were construed along the lines of this decision nearly thirty years ago. The people of the state have not indicated in the way provided by the organic law any dissatisfaction with these provisions. The courts cannot substitute their judgment of what the constitution ought to be for what the people have made it. Its provisions must remain and control until the people see fit to change them in the way provided by the constitution itself."

While the decision has given great satisfaction to all those who are opposed to the extension of municipal functions, it is an indication of a tendency which carries with it certain very grave dangers to the orderly development of our instituions. Whether or not it is advisable for a city like Detroit to undertake the operation of its street railways may be an open question. Whether it is advisable to thwart the desire of the people to inaugurate such a system through an extension of the term "internal improvements" is quite another. It is certain that when this term was inserted its meaning was understood in a sense quite different from that which the Supreme Court has given it in the present decision. As counsel for the respondent clearly pointed out: "If the inhibition which rests upon the state in regard to internal improvements also applies to the cities and villages of the state, all the well-known local conveniences and improvements now existing in the state are without warrant in law, and have no legal standing."

The dangers involved in a broadening of constitutional interpretation are not lessened by the fact that this particular extension of municipal authority may be inexpedient. What it does in effect is, to handicap the city in dealing with a number of problems which are

gradually becoming of very great importance. In fact, the court finds itself under the necessity of resorting to a form of dialectics to justify the establishment of parks, water works, etc. "It may be somewhat difficult," says the court, "to draw the line as to what a municipality may properly do and what it may not do, but all the things above mentioned (public parks, water works, lighting plant, etc.) are authorized and defended because it is a proper exercise of the police power." Instead of interpreting the clause strictly so as to confine its effect within the limits intended by the Constitutional Convention of 1850, the court has given it a broad interpretation, the effect of which will be seriously to handicap municipalities in the work of public improvement. The decision furnishes another excellent illustration of the dangers of attempting to remedy every shortcoming of the legislature by means of constitutional amendments.

Indiana.—*New County and Township Organization.** The laws recently enacted by the legislature of Indiana upon the subject of local government have introduced several new and interesting features into the county and township organization of the State. The Indiana county has always belonged to what is known as the "Pennsylvania" or "commissioner" type, *i. e.* it is governed by three commissioners elected by the people of the county. In the township a peculiar organization has long existed in which local power is concentrated in the hands of an officer, known as the township trustee. This single functionary exercised practically all governmental power in the township; he fixed township rates, constructed and maintained highways, administered poor-relief, employed school-teachers, managed schools, kept township accounts, etc., all without any effective check upon his powers. This concentration of power in the hands of one man has led to widespread abuses and maladministration. The notorious corruption and extravagance in the office of township-trustee throughout the State have been denounced and exposed for more than a generation. Recent improvements in the charters of the larger American cities suggested to the people of Indiana a plan of reorganization for their township and county government. The idea of concentrating mere administrative power in the hands of an executive official or committee, while the power of taxation and of legislation was vested in a separate council, seemed applicable to the township and county. It was felt that the power to tax and the power to administer should be entrusted to two entirely different sets of officials. Accordingly two laws embodying this principle were

*Communication of Augustus Lynch Mason, Esq., Indianapolis.

drafted and introduced into the Legislature, being passed in the early part of the present year.

The county law creates in each county a legislative body known as the county council. The council is composed of seven members, three of whom are elected from the county at large and the remaining four from four councilmanic districts into which the county is divided. Councilmen serve four years and receive a nominal compensation. At the annual meeting of the council the county tax rate for the ensuing calendar year is fixed. One month previous to the meeting every county officer is required to file with the county auditor an itemized estimate of expenses for the ensuing year. The law prescribes in detail and with the greatest particularity the items of these estimates. Upon receipt of these estimates the auditor gives notice of the aggregate amount of the estimates of each officer in the two leading newspapers of the county, and the estimates are open to examination by taxpayers during the month of August. The council receives these estimates and proceeds to fix the tax rate and to fix appropriations for the purposes set forth in the estimates. A majority vote passes tax ordinance but no appropriation larger than the official estimate, nor any appropriation for a matter not contained in the official estimate may be made except by a two-thirds vote. The estimates may be reduced by a majority vote. No officer has power to incur any obligation on behalf of the county beyond the amount of money already appropriated by ordinance for the purpose. The council has the exclusive power to authorize county loans. The three county commissioners continue as heretofore to be the general executive officers of the county, while the duties of the auditor, treasurer and other usual county officers are comparatively unchanged. The commissioners also advertise for county supplies, award contracts, etc.

The township is a miniature reproduction of the county just as the county is a copy of the state. At each township election the people choose an advisory board consisting of three resident freeholders who hold office for two years and receive a nominal compensation. One month before the annual meeting of the advisory board, the trustee, who is still the executive officer of the township, is required to prepare and publish in two leading newspapers his itemized estimates of proposed township expenses for the ensuing year. The advisory board revises these estimates and fixes the rate of taxation for the year. Taxpayers may attend meetings of the advisory board and be heard with regard to proposed township expenses. The advisory board also makes specific appropriations for each item of township expense. It may reduce the estimate by a majority vote but may not exceed the estimate except by a unanimous vote. The trustee is

liable on his bond for any expenditure in excess of appropriations. The practical working of the new laws will be watched with great interest by students of local government.

New York City.*—*Civil Service Law.* The complications in the civil service law of the state have furnished Tammany heads of departments with excuses for making removals and appointments for political reasons. The result has been a series of lawsuits for re-instatement of dismissed city employes, and a series of decisions by the courts holding the action of the heads of departments illegal. Thus nine deputy tax commissioners, who were dismissed after the Tammany administration assumed control of the city government, have been re-instated by order of the courts, and have procured against the city judgment for their unpaid salaries, amounting in the aggregate to about $35,000. The Civil Service Reform Association has persuaded the city comptroller to withhold the pay of more than five hundred city employes who were appointed or promoted without due regard to the civil service law. Under the civil service law passed last spring, the state commission, in consultation with the city commission, prepared rules to govern the administration of the law in New York City. The approval of the Mayor was necessary in order to make these rules operative. Soon after receiving them in July, Mayor Van Wyck returned them to the state commission without his approval, and without any statement of the reasons for his disapproval. The result was to give the state commission power to make rules for the city; and this power the commission immediately proceeded to exercise. The state administration being Republican, and the commission being much more in sympathy with the principle of the law than is the Tammany administration in New York City, the rules thus imposed upon the Tammany board of civil service commissioners are designed to carry out the spirit of the constitutional provision in compliance with which the law was enacted. Tammany's last excuse for attempting to restore the spoils system in the city government has thus been destroyed; and it is not probable that heads of city departments will have the hardihood to continue their efforts in that direction.

Rapid Transit.—On the fourteenth of July the board of rapid transit commissioners addressed to the municipal assembly and the board of estimate and apportionment a commission urging that the city should not incur any new indebtedness until provision had been made for the building of the underground railroad as proposed by the commission. The communication was laid on the table by the board of aldermen,

* Communication of James W. Pryor, Esq., Secretary City Club.

and was filed by the council. It is not probable that either of the two houses of the municipal assembly will take action upon it. All the efforts of the commission to obtain the co-operation of the municipal authorities in securing rapid transit, have failed. The mayor continues to ignore both the respectful representations of the board, and his responsibilities as one of the rapid transit commissioners.

Municipal Assembly. The long-continued refusal of the municipal assembly to approve necessary issues of city bonds has threatened the indefinite postponement of important public works. It seems probable, however, that this difficulty will soon be overcome. At the suit of the contractor for the new hall of records, a supreme court justice has granted a peremptory writ of mandamus directing the municipal assembly to approve an issue of municipal bonds necessary for payment of the city's indebtedness to the contractor for the work which has been done upon the hall of records. The municipal assembly having refused to act in accordance with the mandamus, twenty members of the council have been cited to show cause why they should not be punished for contempt of court.

Taxes and Assessed Valuation. In July the tax commissioners submitted to the municipal assembly the tax rolls, which are the basis for the tax levy for the year. The rolls show an assessed valuation of real estate in this city of about three thousand million dollars—an increase of four hundred million dollars over the valuation of last year. Notwithstanding this unprecedented increase in valuation, the tax rate will probably reach $2.40 per thousand dollars valuation.

Pennsylvania.—*Local and Special Legislation.* The Pennsylvania Bar Association, at its recent annual meeting, discussed the report of a special committee* appointed in 1898 to consider the advisability of adopting an amendment to the State Constitution repealing as much of article III, section 7, of the State Constitution as prohibits the passage of any local or special law regulating the affairs of counties, cities, townships, wards, boroughs or school districts together with such amendatory provisions for notice of proposed local or special acts as shall safeguard the communities affected from hasty or ill-considered legislation.

With each year it has become increasingly evident to students of local government that the framers of the Constitution of 1873, in endeavoring to destroy the abuses of local and special legislation, had burdened the constitution with a sweeping prohibition which was developing evils of a far more serious character than those which it

*The members of this committee were James H. Torrey, Esq., of Scranton, George F. Baer, Esq., of Reading, and M. W. Jacobs, Esq., of Harrisburg.

was intended to remedy. Although the Supreme Court had softened the rigor of the prohibition by permitting the classification of cities, the relief was but temporary, inasmuch as the court soon realized that in order to save the clause from complete annihilation it was necessary to place a limit upon such classification. This was done in Wheeler *v.* Philadelphia, 77 Pa. 338, in which the court declared that it would not permit the number of classes to exceed three. Under the system adopted by the legislature, Philadelphia is the only city of the first class, Allegheny and Pittsburg the only cities of the second class, whereas all the other cities, twenty-five in number, are grouped in the third class. The necessity of providing a uniform system of municipal organization for twenty-five cities with a population ranging from ten to one hundred thousand has resulted in burdening the smaller cities with a complex organization ill-adapted to their needs. The larger cities, on the other hand, have been unable to secure the legislation necessary to meet the numerous problems with which they have to deal.

The evils resulting from this system have given rise to numerous protests and have also been the occasion of a number of conferences of officials of third-class cities. The matter was brought up at the meeting of the Pennsylvania Bar Association in 1898, and resulted in the appointment of the committee mentioned above.

After considering the conditions under which the prohibition on local and special legislation was inserted in the constitution, the committee goes on to say:

"Without seeking to be exact, it is safe to say that since 1874 hundreds of Acts of Assembly have been vetoed on the ground that they were in violation of this prohibition of the Constitution, and almost as many have been declared unconstitutional by the courts. It is neither safe nor fair to set down the continual efforts to escape the constitutional prohibition to the perversity of the people or the wilfulness of the legislature. On the contrary they demonstrate the deep-seated and general discontent upon the part of the municipalities of the state with the restrictions imposed by the Constitution."

The evils of the present system are classed under five heads;—

First.—While the purpose of the constitutional provisions was to prohibit local and special legislation absolutely in the majority of cases, and to require in excepted cases the publication of notice of any such legislation proposed to be adopted, the effect of classification has been to leave the legislature free to pass local and special legislation with reference to the city of Philadelphia, the only city of the first class, and for the twin cities of Pittsburg and Allegheny, the only ones of the second class, without any notice whatever.

Second.—The cities of the third class, now numbering about twenty-five, are compelled to adapt themselves to a rigidly uniform system, which is not altogether agreeable to any and extremely cumbersome to some of the number,

Third.—This results, as to the cities of the third class, in a condition which may well be described as that of arrested development. The problems involved in the evolution of municipal government are among the most weighty and serious which now engage the attention of patriotic publicists. In order that the efforts, all more or less diverse and experimental, to improve municipal conditions should be successful, it is necessary that there should be some degree of freedom for independent action. As to the cities of the third class in this State, such freedom is absolutely precluded.

Fourth.—The principle of home rule for cities, which has come to be recognized as a valuable right and one most jealously guarded, receives no recognition whatever in the present system.

Fifth.—As at present interpreted, the administration of public schools in all of the cities, boroughs and townships, varying almost infinitely in their population, area and social and commercial conditions, must be absolutely uniform."

The system proposed by the committee is to repeal the constitutional provision prohibiting local and special legislation, but to safeguard against hasty and ill-considered legislation by providing that :—"No such local or special law shall be passed unless at least thirty days prior to its introduction into the General Assembly it shall have been submitted in such manner as is, or may be provided by law to the qualified electors of the county, city, township, borough or school district affected by such local or special law at a general or special election, and a majority of the votes cast at such election shall have been voted in its favor.

There shall be no presumption either of law or of fact that there has been a proper submission to and consent of the electors to any such local or special law when the question of the constitutionality of such law is at issue in any legal proceedings and, if the court be not satisfied that such submission and consent have been legally made and given, the law shall be declared unconstitutional and void."

The recommendations of the committee aroused violent opposition amongst the members of the association. It was felt that the abuses arising from local and special legislation had been so great that it would be unwise to undo the work of the Constitutional Convention of 1873. The referendum principle of the proposed amendment was also severely criticised. It soon became evident that the members were unwilling to modify the existing system, and after rejecting the

propositions of the committee the whole subject was dropped. No provision was made for any further reports on the subject.

The only way out of the present difficulty seems to be a change of policy on the part of the state legislature. If instead of minutely determining the form of organization in the municipal corporations act, the legislature restricts itself to prescribing the general framework of government, it will be possible for the municipalities to adapt such framework to their local needs. Cities will thus be able to develop their administrative organization in harmony with their needs. A system similar to this has been successfully worked in Illinois. It offers a solution of the problem without the difficulties and delays incident to an amendment of the Constitution.

League of Wisconsin Municipalities.*—The second biennial convention of the League of Wisconsin Municipalities convened at Fond du Lac, Wis., on June 26 and 27. The cities of the state were well represented. The discussions of the convention were confined to questions of a practical nature, such as the problems of water supply, lighting, street construction, etc. An effort was made with encouraging success, to widen the basis of interest by inviting the heads of city departments to attend and participate in the discussions. There is a decided advantage in this, since the tenure of the heads of departments is more secure, and usually much longer than that of the mayor's.

The cities of Wisconsin are rapidly passing into that stage of development when they will be called upon to consider their relations to the various activities which arise in large urban centers. Such problems as water supply, lighting and street construction are demanding a more prominent place on the municipal program. It may be of interest to observe that the sentiment was almost unanimous in favor of municipal ownership of such public utilities as water and lighting.

The League intends to give a prominent place in its future discussions to the Model Charter proposed by the National League until it secures favorable legislation. The principles of the Model Charter are rapidly gaining favor among the mayors of the state as well as those persons who desire a better municipal code. The mayors are fully conscious of the shortcomings of our municipal systems. The secretary has found that mayors did not attend the present convention because their tenure was so short that it would hardly warrant them in spending time and money in such a manner for the city.

*Communication of Dr. Samuel E. Sparling, Secretary League of Wisconsin Municipalities.

The proposition for a uniform system of accounting for the cities of the state met with almost unanimous approval. An objection raised was the danger of too much centralization which would result from the enforcement of a general system.

An encouraging feature of the convention was the attendance in a body of the common council of two cities which have under consideration municipal water and lighting plants. It was likewise as gratifying to note the general enthusiasm of the convention as the work advanced. If measured only from a social point of view the convention was a success. The delegates went back to their cities more self-assured and with a larger appreciation of the dignity of the worth of governing their cities. The next convention will be held in November.